

REMARKS

Claims 1, 7-14, 18-19, and 21 are now pending in this application. Claims 1, 7 and 21 have been amended. Support for the amendment to claim 1 is found on page 4, lines 12-14 of the present application. Support for the amendment to claim 7 is found in claim 1. Support for the amendment to claim 21 is found on page 4, lines 12-14 of the present application.

The Invention

The claims as presented in the Preliminary Amendment dated April 1, 2004, which were examined, were directed to a composition comprising a photosensitizer and a block copolymer, with some exceptions. There was no mention as to whether the composition was liquid or solid or in another state. However, the copolymer has a particular property wherein, *when* it is in liquid form, the copolymer is capable of forming a complex with the photosensitizer. The originally amended claim in the Preliminary Amendment inadvertently indicated that, when the *carrier composition* is in liquid form, it is capable of forming a complex with the photosensitizer instead of when the *copolymer* is in liquid form, as later amended. Nonetheless, neither rendition limited the composition as being a liquid or solid or in another state. This language merely indicated a particular property of the composition, namely that when the composition or, more precisely, the copolymer is in liquid form, it is capable of forming a complex with the photosensitizer.

New Matter Rejection

Applicants traverse the rejection of claims 1 and 21 under 35 U.S.C. §112, first paragraph as lacking written description. With regard to claim 1, the Office objected to the reference to the carrier composition as a solid. The Office acknowledged that the specification indeed recites that a complex formed from a) a photosensitizer and b) a block polymer may be converted to solid form. Similarly, the claimed composition contains a) a photosensitizer and b) a block copolymer which is in solid form. The present claims define the block polymer *when it is in liquid form* may form a complex with the photosensitizer. Thus, this complex may be converted to a solid form, for which there is support. Nonetheless, applicants have amended claim 1 to define that the carrier composition is formed from the complex and is in solid form.

With regard to claim 21, “hydratable” has been deleted from the preamble and the support now contains either a composition of claim 1 or a hydrated form of the composition. Thus, it is believed that these rejections are overcome and withdrawal of the rejection is respectfully requested.

Indefiniteness

Applicants traverse the rejection of claim 7 under 35 U.S.C. §112, second paragraph, as indefinite with respect to the phrase “solid form.” Claim 7 has been amended to clarify that the complex, when the block copolymer is in liquid form, is selected from micelles, emulsions, etc. Claim 1, as mentioned above, has been amended to define the composition as formed from the complex. Thus, withdrawal of the rejection is respectfully requested.

Election by Original Presentation

As mentioned above, claim 7 defines the complex, which is formed when the block copolymer is in liquid form. The carrier composition as originally presented and examined did not exclude a carrier composition in solid form, but merely defined a property of the block copolymer when in liquid form upon combination with the photosensitizer. By amending claim 1 in the Response to the Office Action filed January 26, 2005, applicants merely limited the composition, which may have been a liquid or solid, for example, to a composition which is in a solid form. As applicants have already presented, and the Office has already examined, composition claims which include both the solid and liquid forms, these claims are considered originally presented claims. According to MPEP § 818.02(a), claims entered in the application before an action are treated as original claims for purposes of restriction only. Further, this section states that the “claims originally presented and acted upon by the Office on their merits determine the invention elected by the applicant in the application.” As the Examiner has already acted on composition claims which were not limited to emulsions or micelles, in contrast to the Office’s suggestion, the claims as now limited to a composition in solid form do not constitute a constructive election of a different invention. Applicants therefore traverse the effective restrictive requirement made in the Office action, and request reconsideration.

Anticipation Rejection

The rejection of claims 1, 8, and 10 under 35 U.S.C. § 102(a) as being anticipated by Rajagopalan (WO 99/51284) is traversed and reconsideration is respectfully requested. It is believed that this rejection is overcome, as the applicants have not constructively elected a composition which is not a solid and the "Examiner agrees with applicants that a liquid is not a solid." Thus, withdrawal of this rejection is respectfully requested.

Obviousness Rejection

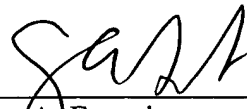
The rejection of claims 1, 7-14, 18, and 19 as allegedly obvious under 35 U.S.C. § 103(a) over Lyons (U.S. Patent No 5,616,342) is traversed and reconsideration is respectfully requested. As with the anticipation rejection, that is, as applicants have not constructively elected a composition which was not a solid, Lyons does not render obvious the present claims because Lyons discloses liquid emulsions and there is no motivation to modify the liquid emulsion to a solid form. Further, the genus of compounds does not anticipate or render obvious the claimed compounds.

If the Examiner is not convinced by the above arguments that the claims are in condition for allowance, applicants respectfully request an interview with the Examiner and the Examiner's supervisor to discuss the validity of the rejections.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 273012011601. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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